## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

LARRIE HOPE	)
Plaintiff(s),	)
v.	) ) CASE NO : 2:07 CV 210 T
RICHARD ALLEN, ET AL.	) CASE NO.: 2:07-CV-210-T
Defendant(s).	)
	)

## MOTION TO RECONSIDER ORDER ISSUED AUGUST 8, 2007

COME NOW the Defendants, Allen, Rowell, Barrett, Bolling, Clay, Barber, **Pettaway, Dinkins, Smith, and Baggett**, by and through undersigned counsel, and file this Motion to Reconsider Order Issued August 8, 2007, stating as follows:

In the Special Report filed by Defendants, they have raised the issue of 1. qualified immunity. The filing by the Plaintiff is a request for discovery. Defendants object to providing discovery based on qualified immunity asserted in their Special Report. Based on the affidavits submitted by Defendants, it is clear that the Defendants were acting in their discretionary authority when the alleged wrongful acts occurred. "Once the affirmative defense of qualified immunity is asserted, '[u]nless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery.' Id. [Marsh v Butler County, 268 F.3d 1014, 1022 (11th Cir. 2001)] (quoting Mitchell v.

Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411 (1985))." Nichols v Maynard, 204 F.Ed.Appx. 826, 828 (11<sup>th</sup> Cir. 2006)

- 2. Defendants also object to having to provide free copies of documents and photographs to the Plaintiff. Under the rules of discovery, these costs should be borne by the Plaintiff.
- 3. Without waiving the issue raised in paragraph one, Defendants will agree to produce these documents for Hope's inspection and make any copies of documents he wants to mark upon Plaintiff paying the costs of reproduction.

Respectfully submitted,

TROY KING **Attorney General** 

/s/ Ellen Leonard

Ellen Leonard (LEO008) **Assistant Attorney General** 

## ADDRESS OF COUNSEL:

Office of the Attorney General 11 South Union Street Montgomery, AL 36130 (334) 353-8699 (334) 242-2433 - fax

## **CERTIFICATE OF SERVICE**

I hereby certify that I have, this the 22nd day of August, 2007, electronically filed the foregoing with the Clerk of Court using the CM/ECF system and served a copy of the foregoing upon the Plaintiff, by placing same in the United States Mail, postage prepaid and properly addressed as follows:

Larry Hope, AIS 181215 Kilby Correctional Facility P. O. Box 150 Mt Meigs, AL 36057

/s/ Ellen Leonard

Ellen Leonard **Assistant Attorney General**